

CORRECTED

The phrase highlighted in yellow has been corrected from "before, on, or after"

Proposed amendment:

PART __. REAL PROPERTY TECHNICAL CORRECTIONS

SECTION __.(a) Section 4.1 of S.L. 2018-80 reads as rewritten:

"**SECTION 4.1.** Sections 1.2 and 1.3 of this act become effective October 1, 2018, and apply to instruments presented for registration on or after that date. Section 2.1 of this act becomes effective December 1, 2019, and applies to deeds and deeds of trust presented for registration on or after that date. Section 2.2 of this act becomes effective December 1, 2019, and applies to all instruments entered into on or after that date. Section 3.1 of this act becomes effective October 1, 2018. The remainder of this act is effective when this act becomes law and applies to mortgages and deeds of trust entered into **on or after** that date."

SECTION __.(b) G.S. 47-17.1 reads as rewritten:

"§ 47-17.1. Documents registered or ordered to be registered in certain counties to designate draftsman; exceptions.

The register of deeds of any county in North Carolina shall not accept for registration, nor shall any judge order registration pursuant to G.S. 47-14, of any deeds or deeds of trust, executed after January 1, 1980, unless the first page of the deeds or deeds of trust bears an entry showing the name of ~~either the person or law firm who drafted the instrument. This section shall not apply to other instruments presented for registration. For the purposes of this section, the register of deeds shall accept the written representation of the individual presenting the deed or deed of trust for registration, or any individual reasonably related to the transaction, including, but not limited to, any employee of a title insurance company or agency purporting to be involved with the transaction, that the individual or law firm listed on the first page is a validly licensed attorney or validly existing law firm in this State or another jurisdiction within the United States; the drafter of the deed or deed of trust. The register of deeds shall not be required to verify or make inquiry concerning the capacity or authority of the person or entity shown as the drafter on the instrument.~~

Explanation:

These amendments are currently Section 4 in SB 595, which is in the House; it does not appear that SB 595 will be taken up again this year.

The amendment to Section 4.1 of S.L. 2018-80 corrects the applicability language of that act as it applies to the act's amendments to G.S. 47-17.1 and G.S. 47-18.3. Specifically, the generic applicability provision in the act states that the act applies to "mortgages and deeds of trust" entered into before, on, or after the effective date, but G.S. 47-17.1 applies to deeds as well as deeds of trust, and G.S. 47-18.3 applies to all instruments filed with the registers of deeds, not just mortgages and deeds of trust.

The amendment to G.S. 47-17.1 (i) strikes language that was added in 2018-80 that has, in practice, not worked and (ii) adds a sentence clarifying that the register of deeds has no duty to verify or make inquiry about the capacity or the authority of the person or entity shown as the drafter on the face of a deed or deed of trust.

This was originally a Bar Association recommendation, and the contact person is David Farrell (DFerrell@nexsenpruet.com).

The General Statutes Commission also approved the amendments, with a date change incorporated here, at its meeting on October 4, 2019.

Background material:

Excerpts from S.L. 2018-80 (highlighting and bolding for emphasis added):

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2017

SESSION LAW 2018-80 HOUSE BILL 852

AN ACT TO MAKE CORRECTIONS AND OTHER AMENDMENTS TO VARIOUS STATUTES IMPACTING REAL PROPERTY OWNERSHIP AND TO MAKE OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE REAL PROPERTY SECTION OF THE NORTH CAROLINA STATE BAR ASSOCIATION, TO REGULATE THE SOLICITATION OF A FEE IN EXCHANGE FOR COPIES OF RECORDED DOCUMENTS, AND TO CLARIFY ELIGIBILITY FOR NEEDS-BASED PUBLIC SCHOOL CAPITAL FUND GRANTS.

The General Assembly of North Carolina enacts:

PART I. MORTGAGE AND DEED OF TRUST CHANGES

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PART II. PROBATE AND REGISTRATION CHANGES

SECTION 2.1. G.S. 47-17.1 reads as rewritten:

→ **"§ 47-17.1. Documents registered or ordered to be registered in certain counties to designate draftsman; exceptions.**

The register of deeds of any county in North Carolina shall not accept for registration, nor shall any judge order registration pursuant to G.S. 47-14, of any **deeds or deeds of trust**, executed after January 1, 1980, unless the first page of the deeds or deeds of trust bears an entry showing the name of either the person or law firm who drafted the instrument. This section shall not apply to other instruments presented for registration. For the purposes of this section, the register of deeds shall accept the written representation of the individual presenting the deed or deed of trust for registration, or any individual reasonably related to the transaction, including, but not limited to, any employee of a title insurance company or agency purporting to be involved with the transaction, that the individual or law firm listed on the first page is a validly licensed attorney or validly existing law firm in this State or another jurisdiction within the United States."

SECTION 2.2. G.S. 47-18.3 reads as rewritten:

"§ 47-18.3. Execution of corporate instruments; authority and proof.

(a) Notwithstanding anything to the contrary in the bylaws or articles of ~~incorporation, incorporation or the operating agreement or articles of organization,~~ when it appears on the face of **an instrument** registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a domestic or foreign corporation ~~or a domestic or foreign limited liability company~~ by its chairman, president, chief executive officer, a ~~vice-president or an vice-president,~~ assistant vice-president, treasurer, ~~or~~ chief financial officer, ~~chief operations officer, general counsel, deputy or assistant general counsel, manager, member, director, or other fiduciary duly authorized by the applicable business entity's statutes or governing documents,~~ such an instrument shall be as valid with respect to the rights of innocent third parties as if executed pursuant to authorization from the board of directors, unless the instrument reveals on its face a potential breach of fiduciary obligation. The subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(b) Any instrument registered in the office of the register of deeds, appearing on its face to be executed by a ~~corporation, corporation or limited liability company,~~ foreign or domestic, and bearing a seal which purports to be the corporate seal, setting forth the name of the corporation engraved, lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, is prima facie evidence that the seal is the duly adopted corporate seal of the corporation, that it has been affixed as such by ~~a person-an individual~~ duly authorized so to do, that the instrument was duly executed and signed by ~~persons-individuals~~ who were officers or agents of the corporation acting by authority duly given by the board of directors, and that any such instrument is the act of the corporation, and shall be admissible in evidence without further proof of execution.

(c) Nothing in this section shall be deemed to exclude the power of any corporate ~~or limited liability company~~ representatives to bind the corporation ~~or limited liability company~~ pursuant to express, implied, inherent or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve corporate ~~or limited liability company~~ officers from liability to the corporation ~~or limited liability company~~ or from any other liability that they may have incurred from any violation of their actual authority.


(e) Any corporation ~~or limited liability company~~ may convey an interest in real property which is transferable by instrument which is duly executed by either an officer, manager, ~~member,~~ or agent of said corporation ~~or limited liability company~~ and has attached thereto a signed and attested resolution of the board of directors of said corporation ~~or the managers or members of the limited liability company~~ authorizing the said officer, manager, ~~member,~~ or agent to execute, sign, seal, and attest deeds, conveyances, or other instruments. This section shall be deemed to have been complied with if an attested resolution is recorded separately in the office of the register of deeds in the county where the land lies, which said resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its authority. Notwithstanding the foregoing, this section shall not require a signed and attested resolution of the board of directors of the corporation ~~or the managers or members of the limited liability company~~ to be attached to an instrument or separately recorded in the case of an instrument duly executed by the corporation's ~~or limited liability company's~~ chairman, president, chief executive officer, a vice-president, assistant vice-president, treasurer, ~~or~~ chief financial ~~officer-officer,~~ ~~chief operations officer, general counsel, deputy or assistant general counsel, manager, member, director, or other fiduciary duly authorized by the applicable business entity's statutes or governing documents.~~ All deeds, conveyances, or other instruments which have been heretofore or shall be hereafter so executed

shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described therein."

PART III. REGULATE SOLICITATION OF COPIES

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PART IV. EFFECTIVE DATES

 **SECTION 4.1.** Sections 1.2 and 1.3 of this act become effective October 1, 2018, and apply to instruments presented for registration on or after that date. Section 3.1 of this act becomes effective October 1, 2018. The remainder of this act is effective when this act becomes law and applies to **mortgages and deeds of trust** entered into before, on, or after that date.

In the General Assembly read three times and ratified this the 15th day of June, 2018.

s/ Bill Rabon
Presiding Officer of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 10:44 a.m. this 25th day of June, 2018